



Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of	)	
Petition of WorldCom, Inc. Pursuant	)	
to Section 252(e)(5) of the	)	
Communications Act for Expedited	)	
Preemption of the Jurisdiction of the	)	CC Docket No. 00-218
Virginia State Corporation Commission	)	
Regarding Interconnection Disputes	)	
with Verizon Virginia Inc., and for	)	
Expedited Arbitration	)	
	)	
In the Matter of	)	CC Docket No. 00-249
Petition of Cox Virginia Telecom, Inc., etc.	)	
	)	
In the Matter of	)	CC Docket No. 00-251
Petition of AT&T Communications of	)	
Virginia Inc., etc.	)	

**VERIZON VA'S DIRECT TESTIMONY ON MEDIATION ISSUES  
(CATEGORIES I AND III THROUGH VII)**

**GENERAL TERMS AND CONDITIONS**

- CHRISTOS T. ANTONIOU
- MICHAEL A. DALY
- STEVEN J. PITTERLE

AUGUST 17, 2001

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**I. WITNESS BACKGROUND**

**2A. CHRISTOS T. ANTONIOU**

**Q. PLEASE STATE YOUR NAME, TITLE AND BUSINESS ADDRESS.**

**A.** My name is Christos T. Antoniou and my business address is 2107 Wilson Boulevard, 11<sup>th</sup> Floor, Arlington, Virginia.

**Q. BY WHOM ARE YOU EMPLOYED AND IN WHAT CAPACITY?**

**A.** I am employed as an attorney by Verizon Services Corp. ("Verizon"). I assumed my current position in May 1998.

**Q. PLEASE SUMMARIZE YOUR EDUCATIONAL BACKGROUND AND EXPERIENCE IN THE TELECOMMUNICATIONS INDUSTRY.**

**A.** My educational background and experience in the telecommunications industry is described in detail at Rebuttal Exhibit GTC-1. As highlighted therein, prior to joining Verizon, I was a corporate attorney at Skadden, Arps, Slate, Meagher & Flom LLP, and at Milbank, Tweed, Hadley & McCloy, focusing on project finance and other corporate issues. I received a J.D.. from Yale Law School in 1992 and a B.S. from the United States Military Academy at West Point in 1984. Prior to practicing law, I served as an officer in the United States Army.

**Q. PLEASE STATE IN GENERAL TERMS YOUR RESPONSIBILITIES.**

1 A. My principal areas of responsibility are negotiating, arbitrating and litigating  
2 contractual arrangements and disputes under the Telecommunications Act of  
3 1996, and providing legal advice to Verizon's product managers for  
4 interconnection and related matters.

5

**6B. MICHAEL A. DALY**

7 **Q. PLEASE STATE YOUR NAME, TITLE AND BUSINESS ADDRESS.**

8 A. My name is Michael A. Daly and my business address is 2107 Wilson Boulevard,  
9 11<sup>th</sup> Floor, Arlington, Virginia.

10

11 **Q. BY WHOM ARE YOU EMPLOYED AND IN WHAT CAPACITY?**

12 A. I am employed by Verizon Services Group ("Verizon"), Wholesale Markets,  
13 which is the Verizon business unit responsible for serving resellers and other  
14 competitive local exchange carriers ("CLECs"). I am a director in the  
15 Interconnection Services group responsible for contract negotiations. I assumed  
16 my current position in February, 1997.

17

18 **Q. PLEASE SUMMARIZE YOUR EDUCATIONAL BACKGROUND AND**  
19 **EXPERIENCE IN THE TELECOMMUNICATIONS INDUSTRY.**

20 A. My educational background and experience in the telecommunications industry is  
21 described in detail at Exhibit GTC-1. As highlighted therein, during my twenty-

1 two year career with Verizon and its predecessor companies, I have held a variety  
2 of positions with increasing levels of responsibility in Sales, Marketing, Product  
3 Management and Interconnection Services.

4  
5 **Q. PLEASE STATE IN GENERAL TERMS YOUR RESPONSIBILITIES.**

6 A. My principal responsibility is to direct a team of negotiators representing Verizon  
7 in the course of interconnection negotiations with CLECs pursuant to Sections  
8 251 and 252 of the Telecommunications Act of 1996. I have specific  
9 accountability for negotiations with AT&T. I also oversee the interconnection  
10 negotiations with Commercial Mobile Radio Service ("CMRS") carriers as well  
11 as manage a team of people responsible for the processing of requests for  
12 negotiations.

13  
14 **C. STEVEN J. PITTERLE**

15 **Q. PLEASE STATE YOUR NAME, TITLE AND BUSINESS ADDRESS.**

16 A. My name is Steven J. Pitterle and my business address is 600 Hidden Ridge  
17 Drive, Irving, Texas, 75038.

18  
19 **Q. BY WHOM ARE YOU EMPLOYED AND IN WHAT CAPACITY?**

20 A. I am employed by Verizon Services Group ("Verizon") as Director --  
21 Negotiations.

1

2   **Q.     PLEASE SUMMARIZE YOUR EDUCATIONAL BACKGROUND AND**  
3   **EXPERIENCE IN THE TELECOMMUNICATIONS INDUSTRY.**

4   A.    My educational background and experience in the telecommunications industry is  
5       described in detail at Exhibit GTC-1. As highlighted therein, during my thirty-  
6       one year career with Verizon and its predecessor companies, I have held a variety  
7       of position with increasing levels of responsibility in Engineering, Service,  
8       Regulatory Affairs, intraLATA Compensation Administrator, Interexchange  
9       Account Manager for the former GTE North, and Wisconsin Director-External  
10      Affairs.

11

12   **Q.     PLEASE STATE IN GENERAL TERMS YOUR RESPONSIBILITIES.**

13   A.    My principal responsibility is to oversee Verizon's competitive local exchange  
14       carrier ("CLEC") interconnection negotiation activities, as specified by Sections  
15       251 and 252 of the Telecommunications Act of 1996, for defined areas within  
16       Verizon. I am also involved in the development of policies pertaining to  
17       interconnection matters.

18

19                   **II. PURPOSE AND OVERVIEW OF TESTIMONY**

20   **Q.     WHAT IS THE PURPOSE OF THE DIRECT TESTIMONY OF THE**  
21   **GENERAL TERMS AND CONDITIONS PANEL ON THE MEDIATION**  
22   **ISSUES IN THIS ARBITRATION?**



1 A. To the extent that the mediation issues have not been resolved, the purpose of this  
2 testimony is to explain the contract provisions Verizon VA proposes with respect  
3 to the General Terms and Conditions issues raised by Petitioners or Verizon VA  
4 in this proceeding, to support Verizon VA's position with respect to the General  
5 Terms and Conditions issues, and to respond to the contract language and  
6 positions of the Petitioners on the General Terms and Conditions issues.

7

8 **Q. PLEASE PROVIDE AN OVERVIEW OF THE GENERAL TERMS AND**  
9 **CONDITIONS ISSUES, HOW THEY WERE ADDRESSED, AND**  
10 **WHETHER THEY HAVE BEEN RESOLVED.**

11 A. Originally, there were approximately 70 "general terms and conditions" issues,  
12 including supplemental issues. With nine exceptions (Issues I-10, III-15, V-11,  
13 and VII-16 through VII-22), the "terms and conditions" issues are unique to  
14 WorldCom. Exhibit C-1 to Verizon's Answer to WorldCom's Petition represents  
15 Verizon VA's proposed interconnection agreement to WorldCom, including its  
16 proposed contract language for the general terms and conditions issues. Despite  
17 Verizon VA's continued belief that the Verizon VA-proposed interconnection  
18 agreement should be adopted, Verizon VA was willing to narrow the issues in this  
19 section so as to minimize the burden on the Commission in resolving this  
20 arbitration. Accordingly, for numerous general terms and conditions issues,  
21 Verizon VA indicated in its Answer to WorldCom's Petition where it would not  
22 further contest the WorldCom-proposed language, if the Commission deems it  
23 necessary to adopt such language in the context of an arbitrated agreement. For

1 various other general terms and conditions issues, Verizon VA proposed resolving  
2 open issues with WorldCom by adopting the corresponding contract language to  
3 which Verizon VA and AT&T had already agreed. For all of the remaining  
4 general terms and conditions issues in dispute, except for Issue I-10 (term of the  
5 interconnection agreement), the parties agreed to attempt to reach further  
6 resolution in the context of mediation. Despite the combined result of these  
7 efforts, the following issues remain unresolved:

8 III-15: Intellectual Property  
9 IV-45: Fraud Prevention  
10 IV-84: Scope of Agreement  
11 IV-85: Agreement versus Tariff  
12 IV-88: Assignment and Delegation  
13 IV-91: Branding  
14 IV-95: Responsibility for Costs and Expenses  
15 IV-97: Confidential Information  
16 IV-101: Binding Arbitration  
17 IV-106: Indemnification  
18 IV-107: Intellectual Property  
19 IV-110: Migration of Service  
20 IV-113: Negotiation Prompted by Changes in Law  
21 IV-120: Remedies (Available Remedies)  
22 IV-121: Remedies (Performance Standards, Metrics, and Self-Executing  
23 Remedies)  
24 IV-129: Definitions  
25 V-11: Indemnification for Directory Listings  
26 VI-1(N): Assurance of Payment  
27 VI-1(O): Default  
28 VI-1(P): Discontinuance of Service by CLEC  
29 VI-1(Q): Insurance  
30 VI-1(R): References  
31 VI-1(T): Technology Upgrades  
32 VII-17: Transfer of Telephone Operations  
33 VII-19: Language Withdrawn by AT&T (resolved except for Section  
34 6.4 of the parties' proposed agreement).  
35

36 In addition to the issues identified as "General Terms and Conditions" issues in  
37 various pleadings, this Panel addresses a related issue grouped in previous

1 pleadings with Miscellaneous issues--Issue V-15 relating to sales of exchanges.

2 In addition, this Panel addresses two related issues grouped in previous pleadings  
3 with UNE issues -- Issue Nos. IV-15 and VI-1(E) relating to change in law  
4 provisions.

5  
6 Verizon VA will continue to work cooperatively with the Petitioners to resolve as  
7 many of these issues as possible prior to the hearing. In any case, this Panel  
8 addresses the currently unresolved issues separately below.

9  
10 **III. INTELLECTUAL PROPERTY (Issue III-15)**

11 **Q. BRIEFLY DESCRIBE THE STATUS OF THIS ISSUE.**

12 A. This issue, which is common to WorldCom and AT&T, was not resolved by the  
13 parties. However, the essential dispute seems to revolve around whether either  
14 AT&T or WorldCom is entitled to indemnification or warranties associated with  
15 Verizon VA's obligation to use its "best efforts" to ensure that AT&T and  
16 WorldCom have from Verizon VA's vendors the necessary intellectual property  
17 rights to use Verizon VA's network (including, most particularly, software  
18 licensing rights).

19  
20 **Q. WHAT DOES VERIZON VA PROPOSE TO MEMORIALIZE ITS**  
21 **OBLIGATION TO USE BEST EFFORTS TO PROCURE THE**  
22 **RELEVANT RIGHTS AND LICENSES FOR AT&T AND WORLDCOM**

1           **TO USE THE INTELLECTUAL PROPERTY OF THIRD-PARTY**  
2           **VENDORS EMBEDDED IN VERIZON VA'S NETWORK?**

3       A.     Pursuant to the *UNE Licensing Order*,<sup>1</sup> there are four basic components of the law  
4           applicable to this intellectual property issue:

- 5           •     Verizon must make UNEs available to CLECs;
- 6           •     Verizon must inform CLECs of applicable restrictions, if any, contained in  
7                 third party licensing agreements, affecting CLECs' uses of UNEs provided  
8                 by Verizon;
- 9           •     Verizon must use best efforts to negotiate or renegotiate licenses to  
10                procure the relevant rights and licenses for AT&T and WorldCom to use  
11                the intellectual property of third-party vendors embedded in Verizon's  
12                network; and
- 13          •     Verizon may allocate any costs associated with acquiring the necessary  
14                 intellectual property rights among all requesting carriers.

15       Verizon's proposed language to AT&T (and the language it proposed to use for  
16       WorldCom) is consistent with this applicable law. It provides:

17               28.16.4 AT&T acknowledges that services and  
18               facilities to be provided by BA hereunder may  
19               use or incorporate products, services or  
20               information proprietary to third party vendors  
21               and may be subject to third party intellectual  
22               property rights. In the event that proprietary  
23               rights restrictions in agreements with such third  
24               party vendors do not permit BA to provide to  
25               AT&T, without additional actions or costs,  
26               particular unbundled Network Element(s)  
27               otherwise required to be made available to  
28               AT&T under this Agreement, then, as may be  
29               required by Applicable Law:

30               a) BA agrees to notify AT&T, directly or  
31               through a third party, of such restrictions that  
32               extend beyond restrictions otherwise imposed  
33

---

<sup>1</sup> *In re Petition of MCI for Declaratory Ruling that New Entrants Need not Obtain Separate License or Right-to-Use Agreements before Purchasing Unbundled Elements*, Memorandum Opinion and Order, 15 F.C.C.R. 13896 (2000).

1 under this Agreement or applicable Tariff  
2 restrictions ("Ancillary Restrictions"); and  
3

4 b) *BA shall use its best efforts*, as commercially  
5 practical, to procure rights or licenses to allow  
6 BA to provide to AT&T the particular  
7 unbundled Network Element(s), on terms  
8 comparable to terms provided to BA, directly or  
9 on behalf of AT&T ("Additional  
10 Rights/Licenses"). Costs associated with the  
11 procurement of Additional Rights/Licenses shall  
12 be passed through to AT&T as permitted under  
13 Applicable Law.  
14

15 Verizon VA's proposed language makes UNEs available, provides notification of  
16 any restrictions (which, to date, has been only a theoretical requirement), obligates  
17 Verizon VA's best efforts to procure rights or licenses again (which to date, has  
18 been only a theoretical requirement), and provides for cost recovery as permitted  
19 under "applicable law" (which also has, to date, been only a theoretical issue).  
20

21 **Q. WHY DOES VERIZON VA OBJECT TO AT&T'S AND WORLDCOM'S**  
22 **PROPOSED CONTRACT LANGUAGE?**

23 A. WorldCom and AT&T both want something much more than Verizon VA's "best  
24 efforts." Specifically, both AT&T and WorldCom attempt to replace the "best  
25 efforts" standard prescribed by the Commission with a commercially  
26 unreasonable strict liability standard, by injecting indemnification obligations not  
27 required by applicable law.  
28

1 AT&T cites only § 251 of the Act for the proposition that Verizon VA must  
2 warrant permissible uses of UNEs. This is unreasonably straining the meaning of  
3 § 251, especially in light of Verizon VA's agreement to notify AT&T of any  
4 restrictions. WorldCom has proposed revisions to the existing contract language,  
5 citing the *UNE Licensing Order* and the decision of United States Court of  
6 Appeals for the Fourth Circuit in *AT&T Communications of Virginia, Inc. v. Bell*  
7 *Atlantic-Virginia, Inc.*, 197 F.3d 663 (4th Cir. 1999). However, WorldCom fails  
8 to explain how Verizon VA's proposed contract language is inconsistent with the  
9 law it cites. By suggesting warranty or indemnification language that goes  
10 beyond these requirements, both AT&T and WorldCom seek to guarantee results  
11 beyond Verizon VA's control, implying that if a certain result is not achieved,  
12 then Verizon VA must have failed to use "best efforts." Nothing cited by AT&T  
13 or WorldCom provides a basis for imposing these warranty or indemnification  
14 obligations on Verizon VA.

15  
16 Moreover, AT&T's proposal to require Verizon VA to hold it harmless has been  
17 rejected by the New York Public Service Commission. *Joint Petition of AT&T*  
18 *Communication of New York, Inc., TCG New York Inc. and ACC Telecom Corp.*  
19 *Pursuant to Section 252(b) of the Telecommunications Act of 1996 for Arbitration*  
20 *to Establish an Interconnection Agreement with Verizon New York Inc., (AT&T-*  
21 *Verizon New York Order)*, Case No. 01-C-0095, at 23 (July 30, 2001). The New  
22 York Commission rejected AT&T's proposed language to the extent that is

1 “would, in effect, have Verizon guarantee the performance of third party vendors  
2 to AT&T, which is unnecessary.” *Id.*

3  
4 **IV. FRAUD PREVENTION (Issue IV-45)**

5 **Q. BRIEFLY DESCRIBE THE STATUS OF THIS ISSUE.**

6 A. This issue, which is unique to WorldCom, was not completely resolved by the  
7 parties. However, the essential dispute seems to revolve around WorldCom’s  
8 proposal that the parties’ contract include a clause that requires each party to  
9 “indemnify and hold each other harmless for any losses resulting [from]  
10 unauthorized use of the indemnifying party’s facilities or services, for example,  
11 ‘clip on’ fraud or calling card services.”

12  
13 **Q. WHY DOES VERIZON VA OBJECT TO WORLDCOM’S PROPOSED**  
14 **CONTRACT LANGUAGE?**

15 A. WorldCom seeks to impose upon Verizon VA obligations that it has no duty to  
16 satisfy and which, importantly, are commercially unreasonable. The Commission  
17 permits the ILEC to implement reasonable security procedures, but does not  
18 impose a burden on the ILEC to meet any particular security demands made by  
19 the CLEC. *See Advanced Services Order II* at ¶¶ 46-48; *Local Competition Order*  
20 *at* ¶ 598. As Verizon VA has in the past, and as is clearly stated in § 26 of  
21 Verizon VA’s proposed interconnection agreement, Verizon VA will continue to  
22 cooperate with any CLEC to minimize fraud. Verizon VA is opposed, however,

1 to the language proposed by WorldCom, which seeks to shift the burden of  
2 liability from WorldCom to Verizon VA for losses occasioned by certain types of  
3 fraud. The proper formula is that set forth in Verizon VA's proposed  
4 interconnection agreement, Terms and Conditions of Agreement § 17: "CLEC  
5 assumes responsibility for all fraud associated with its Customers and accounts."  
6 Just as Verizon VA shoulders the loss for any fraud perpetrated against it by its  
7 end-user customers, so should WorldCom shoulder that loss for fraud perpetrated  
8 by its customers. Otherwise, Verizon VA would be a guarantor -- effectively  
9 guaranteeing that when WorldCom provides services to its customers that it will  
10 do so without the risk of any fraud. It seems that WorldCom would have Verizon  
11 VA station guards at every telephone pole, NID, cabinet and the like to ensure that  
12 no fraud is perpetrated. This is, of course, ridiculous. Verizon VA's network  
13 spans a massive territory, and it is commercially unreasonable to have Verizon  
14 VA undertake the obligation WorldCom has suggested. Instead, each party  
15 should be responsible for dealing with any fraud that is perpetrated against its  
16 respective customers.

## 18 **V. SCOPE OF AGREEMENT (Issue IV-84)**

19 **Q. BRIEFLY DESCRIBE THE STATUS OF THIS ISSUE.**

20 A. This issue, which is unique to WorldCom, was not resolved by the parties,  
21 although the parties may have clarified their dispute. The issue arises from  
22 WorldCom's proposed Part A, § 1.2, which has three subparts.



1

2   **Q.     PLEASE DESCRIBE WORLDCOM'S PROPOSED PART A, § 1.2 AND**  
3       **VERIZON VA'S OBJECTION TO ITS INCLUSION IN THE PARTIES'**  
4       **INTERCONNECTION AGREEMENT.**

5   A.    In the first sentence of WorldCom's proposed Part A, § 1.2, WorldCom proposes  
6       that Verizon VA be obligated to provide services in any technically feasible  
7       combination requested by WorldCom (excepting Local Resale). Although  
8       Verizon VA is unsure what WorldCom seeks with this proposed language,  
9       Verizon VA believes that the parties' UNE attachment (see Section 16) is the  
10      appropriate place to address the issue of combinations. Specifically, Verizon VA  
11      will comply with applicable law, but it cannot be forced to obligate itself through  
12      the interconnection agreement beyond the requirements of applicable law as that  
13      law may change over time. Accordingly, the first sentence of WorldCom's  
14      proposed Part A, § 1.2 should be rejected for inclusion in this part of the General  
15      Terms and Conditions section of the parties' agreement.

16

17       In the second sentence of WorldCom's proposed Part A, § 1.2, WorldCom  
18       proposes that the parties be prohibited from discontinuing or refusing to provide  
19       any service provided or required under the interconnection agreement (except in  
20       accordance with the terms of the interconnection agreement), without the other  
21       party's written agreement. We believe that Verizon VA and WorldCom disagree  
22       regarding the appropriate "change in law" provision. However, the parties have  
23       agreed to address this issue in connection with Issue No. IV-113 and the

1 associated contract language. Accordingly, the second sentence of WorldCom's  
2 proposed Part A, § 1.2 should be rejected for inclusion in this part of the General  
3 Terms and Conditions section of the parties' agreement.

4  
5 In the third sentence of WorldCom's proposed Part A, § 1.2, WorldCom proposes  
6 that Verizon VA be prohibited from altering its network without notice in a  
7 manner (i) inconsistent with the Commission's notice requirements and (ii) that  
8 would impair WorldCom's rights under the interconnection agreement. Verizon  
9 VA must be permitted to change its network in accordance with applicable law.  
10 Verizon VA proposes contract language that addresses this in § 42 of its proposed  
11 interconnection agreement with WorldCom, which is the subject of Issue No. VI-  
12 1(T), discussed below. Accordingly, the third sentence of WorldCom's proposed  
13 Part A, § 1.2 should be rejected for inclusion in this part of the General Terms and  
14 Conditions section of the parties' agreement.

15  
16 **VI. AGREEMENT VERSUS TARIFF (Issue IV-85)**

17 **Q. BRIEFLY DESCRIBE THE STATUS OF THIS ISSUE.**

18 **A.** Although this issue is grouped in pleadings with the general terms and conditions  
19 issues, and it may ultimately be addressed with contract language included in the  
20 general terms and conditions section of the agreement, the pricing terms and  
21 conditions panel has addressed all the "agreement versus tariff" issues together.

1                   **VII. ASSIGNMENT AND DELEGATION (Issue IV-88)**

2   **Q.     BRIEFLY DESCRIBE THE STATUS OF THIS ISSUE.**

3   A.     This issue, which is unique to WorldCom, was not resolved by the parties.  
4           However, the essential dispute seems to revolve around whether WorldCom will  
5           agree to Verizon VA's proposed modification to its proposed language.

6  
7           WorldCom originally proposed in Part A, § 3.1, that the interconnection  
8           agreement contain a provision: (i) making assignments or delegations of  
9           interconnection agreement rights or obligations to any non-affiliated entity void,  
10          without prior written notice and consent, (ii) requiring written notice of an  
11          assignment or delegation to an affiliate, and (iii) further setting forth the rights and  
12          obligations of the parties upon a valid assignment or delegation. In the interest of  
13          narrowing issues for arbitration, Verizon VA indicated its agreement to inclusion  
14          of WorldCom's proposed language with a slight modification. That is, Verizon  
15          VA proposed that the clause should apply to all assignments and delegations,  
16          including to affiliated companies. This is to ensure that an unscrupulous carrier  
17          does not have the right to delegate its obligations to an affiliated shell company  
18          (*i.e.*, one without financial resources) and that a financially distressed carrier does  
19          not have the right to assign only its rights (but not its obligations) to a non-  
20          distressed affiliate, in either case without the consent of the other party to the  
21          agreement.

1 Alternatively, Verizon VA has communicated its willingness to use the same  
2 language for this section as that to which AT&T and Verizon VA have agreed in  
3 § 28.8 of the Verizon/AT&T proposed interconnection agreement. That language  
4 states:

5       28.8           Assignment and Delegation

6           **28.8.1** Neither Party may assign this Agreement or any of  
7 its rights or interests hereunder, nor delegate any of its  
8 obligations under this Agreement, to a third party without  
9 the prior written consent of the other Party, which consent  
10 will not be unreasonably withheld; provided, however, that  
11 either Party may assign this Agreement to an affiliate, with  
12 the other Party's prior written consent, upon the provision  
13 of reasonable evidence by the proposed assignee that it has  
14 the resources, ability, and authority to provide satisfactory  
15 performance under this Agreement and that the proposed  
16 assignee is in good standing with Verizon or AT&T, as  
17 applicable. Any assignment or delegation in violation of  
18 this subsection 28.8 shall be void and ineffective and  
19 constitute a default of this Agreement. For the purposes of  
20 this Section, the term "affiliate" shall mean any entity that  
21 controls, is controlled by, or is under common control with  
22 the assigning Party.  
23

24 Moreover, in the context of mediation, Verizon VA proposed a further  
25 modification recognizing that consent would be required in the case of an  
26 assignment or delegation to an affiliate only if the assignor or proposed assignee is  
27 not current in its payments (i.e., there is a payment default -- Verizon VA having  
28 made clear, to assuage WorldCom's concerns, that a bona fide good faith billing  
29 dispute does not constitute a payment default).  
30

**VIII. BRANDING (Issue IV-91)**

**Q. BRIEFLY DESCRIBE THE STATUS OF THIS ISSUE.**

A. This issue, which is unique to WorldCom, was not resolved by the parties. However, the essential dispute seems to revolve around whether Verizon VA can be required to provide branding in the UNE-P context. In reaching agreement on the terms of the Resale Attachment, Verizon VA and WorldCom have reached agreement regarding the branding provisions that will apply in the context of resold services. Notwithstanding that agreement, WorldCom proposes in Part A, § 7, detailed provisions regarding how branding should occur.

**Q. DESCRIBE VERIZON VA'S OPPOSITION TO WORLDCOM'S PROPOSED BRANDING PROVISIONS IN PART A, § 7?**

A. WorldCom's proposed language is problematic in that it calls for branding for services other than resold services – specifically in the UNE-P context. The ILEC obligation to provide branding services exists when the CLEC purchases a package including operator, call completion or directory assistance from the ILEC as a part of the resale of services.<sup>2</sup> Verizon VA is willing to provide branding to WorldCom in accordance with the Commission's rules regarding resale. Nevertheless, Verizon VA is under no obligation to provide branding to WorldCom when WorldCom leases Verizon VA's network elements pursuant to a UNE-P configuration.

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<sup>2</sup> See 47 C.F.R. 51.613(c) (2000).

1 WorldCom contends that “if WorldCom is providing service to end users via the  
2 UNE-Platform, Verizon VA would have to brand the service to reflect that the  
3 customer is receiving service from WorldCom.” WorldCom misunderstands what  
4 it leases from Verizon when it provides telecommunications services to end users  
5 via the UNE-P. Moreover, WorldCom can provide operator services and  
6 directory assistance through other means over the UNE-P. For instance, Verizon  
7 VA is willing to provide customized routing to WorldCom and, in addition,  
8 WorldCom can make arrangements through third-party sources to “reflect that the  
9 customer is receiving service from WorldCom.”

10  
11 Unlike resale, in which WorldCom purchases Verizon VA’s telecommunication  
12 services at a wholesale discount, when WorldCom purchases the UNE-P it leases  
13 Verizon VA’s physical network. As the Commission articulated in the *UNE*  
14 *Remand Order*, Verizon VA has an obligation under certain circumstances to  
15 unbundle network elements, which include loops, subloops, local switching, and  
16 interoffice transmission facilities, among other elements. “Branding” is not a  
17 network element, but a service Verizon VA provides pursuant to its resale  
18 obligations. Verizon VA provides WorldCom with customized routing as a  
19 means through which WorldCom can provide operator services and directory  
20 assistance to its end users. WorldCom’s position on this issue appears to be an  
21 attempt to circumvent the Commission’s decision on the unbundling of OS/DA in  
22 the *UNE Remand Order*.

1 In the *UNE Remand Order*, the Commission declared that:

2 where incumbent LECs provide customized routing, lack of access  
3 to the incumbents' OS/DA service on an unbundled basis does not  
4 materially diminish a requesting carrier's ability to offer  
5 telecommunications service. The record provides significant  
6 evidence of a wholesale market in the provision of OS/DA services  
7 and opportunities for self-provisioning OS/DA services . . . We  
8 note that nondiscriminatory access to the incumbent's underlying  
9 databases used in the provision of OS/DA is required under section  
10 251(b)(3) of the 1996 Act . . . Accordingly, incumbent LECs need  
11 not provide access to its OS/DA as an unbundled network element.<sup>3</sup>  
12

13 The Commission specifically refused to broaden the definition of OS/DA to  
14 include the "affirmative obligation to rebrand OS/DA . . ."<sup>4</sup> WorldCom  
15 impermissibly seeks to expand the definition of OS/DA in this interconnection  
16 arbitration to include branding and illegitimately attempts to force Verizon VA to  
17 unbundle its OS/DA. Because Verizon VA provides customized routing and since  
18 other alternatives exist for WorldCom to provide OS/DA Services WorldCom  
19 should not be allowed to do indirectly what it cannot do directly, that is – require  
20 Verizon VA to rebrand OS/DA.  
21

22 WorldCom's proposed language is further problematic in that it fails to recognize  
23 the need for the Parties' to negotiate the specific terms for branding. WorldCom  
24 ignores the fact that there should be a fee for branding and mistakenly assumes  
25 that branding is automatic and free. In proposing language that prohibits Verizon  
26 VA from interfering with WorldCom's branding, WorldCom suggests that  
27 WorldCom could somehow manipulate Verizon VA's network to provide  
28 branding. Finally, Verizon VA cannot agree to WorldCom's vague and

1       ambiguous proposal that Verizon VA will always “thoroughly” test its interfaces  
2       and transfer features before providing branding to WorldCom or third parties.

3  
4       As stated previously, Verizon VA would be willing to incorporate the language to  
5       which Verizon VA and AT&T have agreed in §§ 12.3 and 18.2 of the Verizon  
6       VA-proposed interconnection agreement for AT&T, as follows:

7  
8       12.3    To the extent required by Applicable Law, upon request by  
9       AT&T and at prices, terms and conditions to be negotiated by  
10      AT&T and Verizon, Verizon shall provide Verizon Resold  
11      Services that are identified by AT&T’s trade name, or that are not  
12      identified by trade name, trademark or service mark.

13  
14      ...

15      12.8.1 Verizon will recognize AT&T as the customer of record of  
16      all services ordered by AT&T under this Agreement. AT&T shall  
17      be the single point of contact for AT&T Customers with regard to  
18      all services, facilities or products provided by Verizon to AT&T  
19      and other services and products which they wish to purchase from  
20      AT&T or which they have purchased from AT&T.

21      Communications by AT&T Customers with regard to all services,  
22      facilities or products provided by Verizon to AT&T and other  
23      services and products which they wish to purchase from AT&T or  
24      which they have purchased from AT&T, shall be made to AT&T,  
25      and not to Verizon. AT&T shall instruct AT&T Customers that  
26      such communications shall be directed to AT&T.

27      12.8.2 Requests by AT&T Customers for information about or  
28      provision of products or services which they wish to purchase  
29      from AT&T, requests by AT&T Customers to change, terminate,  
30      or obtain information about, assistance in using, or repair or  
31      maintenance of, products or services which they have purchased  
32      from AT&T, and inquiries by AT&T Customers concerning  
33      AT&T’s bills, charges for AT&T’s products or services, and, if  
34      the AT&T Customers receive dial tone line service from AT&T,

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<sup>3</sup> *UNE Remand Order* ¶ 441-42.

<sup>4</sup> *Id.* at ¶ 444.



1 annoyance calls, shall be made by the AT&T Customers to  
2 AT&T, and not to Verizon.

3 18.2.3 AT&T and Verizon will employ the following procedures  
4 for handling misdirected repair calls:

5 18.2.3.1 AT&T and Verizon will educate their respective  
6 Customers as to the correct telephone numbers to call in order  
7 to access their respective repair bureaus.

8 18.2.3.2 To the extent Party A is identifiable as the  
9 correct provider of service to Customers that make misdirected  
10 repair calls to Party B, Party B will immediately refer the  
11 Customers to the telephone number provided by Party A, or to  
12 an information source that can provide the telephone number of  
13 Party A, in a courteous manner and at no charge.

14 In responding to misdirected repair calls, neither Party shall  
15 make disparaging remarks about the other Party, its services,  
16 rates, or service quality.

17 18.2.3.3 AT&T and Verizon will provide their respective  
18 repair contact numbers to one another on a reciprocal basis.

19  
20 18.2.4 In addition to Section 7.6 addressing misdirected repair  
21 calls, the Party receiving other types of misdirected inquiries from  
22 the other Party's Customer shall not in any way disparage the  
23 other Party.  
24

25 **IX. RESPONSIBILITY FOR COSTS AND EXPENSES (Issue IV-95)**

26 **Q. BRIEFLY DESCRIBE THE STATUS OF THIS ISSUE.**

27 A. This issue, which is unique to WorldCom, was not resolved by the parties.  
28 WorldCom proposes in Part A, § 8.2 a provision making each party (subject to  
29 certain exceptions) responsible for all costs and expenses incurred in complying  
30 with its obligations under the interconnection agreement, and requiring each party  
31 to undertake the technological measures necessary for such compliance.

1

2   **Q.    DESCRIBE VERIZON VA'S OPPOSITION TO WORLDCOM'S**  
3       **PROPOSAL IN PART A, § 8.2?**

4    A.    As an initial matter, to the extent that it is consistent with applicable law regarding  
5           responsibility for costs and expenses in complying with obligation under the  
6           interconnection agreement, it simply is not necessary.  The parties' pricing  
7           provisions will set forth the rate elements and rates the parties may charge each  
8           other.  To the extent that it is not consistent with applicable law, Verizon VA  
9           cannot be compelled to forego its right to recover costs or expenses outside the  
10          context of the interconnection agreement.  Notwithstanding its view that the  
11          proposed provision is unnecessary, and in the spirit of compromise, Verizon VA  
12          proposed to add the phrase "or otherwise provided for under Applicable Law"  
13          after the introductory clause "Except as otherwise specified in this Agreement."  
14          This addition would make clear that Verizon VA must be compensated for its  
15          costs in providing services to WorldCom in whatever manner is consistent with  
16          applicable law.  Without this modification, Verizon VA opposes WorldCom's  
17          Part A, § 8.2.

18

19                   **X. CONFIDENTIAL INFORMATION (Issue IV-97)**

20   **Q.    BRIEFLY DESCRIBE THE STATUS OF THIS ISSUE.**

21    A.    This issue, which is unique to WorldCom, has not yet been resolved by the  
22          parties.

1  
2 In its Petition, WorldCom proposed provisions governing the parties'  
3 responsibilities with respect to confidential information in WorldCom's proposed  
4 Part A, §§ 10.1, 10.1.1-10.1.2, 10.2, 10.2.1-10.2.3, 10.3, 10.3.1-10.3.2, 10.4-10.6,  
5 10.7, 10.7.1-10.7.5, 10.8-10.13. In its Answer, with one clarification, Verizon VA  
6 indicated it would agree to inclusion of these provisions in the parties'  
7 interconnection agreement. The clarification involves re-inserting the language  
8 that was part of the 1997 agreement, but deleted by WorldCom in its proposed  
9 interconnection agreement to the Commission.

10  
11 Specifically, Verizon VA agrees to the proposed language only if it is modified to  
12 reinsert the language that was deleted by WorldCom from the current contract –  
13 that is, §§ 22.13 and 22.14 of the current contract, which would now be §§ 10.13  
14 and 10.14, giving Verizon VA the right to monitor WorldCom's use of CPNI for  
15 Verizon VA's customer in a proper manner.

16  
17 It is unclear why WorldCom is unwilling to accept this provision. Verizon VA  
18 has a well-founded concern that some carriers may "surf" Verizon's customer  
19 information database. That is to say that they may access the database without  
20 authorization from customers and proceed to garner competitive information to  
21 assist them in marketing to such customers. This would be a violation of the  
22 customers' rights to privacy as well as a violation of the statutory prohibition on

1 using carrier information for marketing. Verizon VA's proposed language creates  
2 a deterrent to carriers that may be predisposed to engage in such inappropriate  
3 conduct. This is because they know that Verizon VA's wholesale group may  
4 become aware of the conduct.

5  
6 Verizon VA understands that WorldCom may believe that audit rights should  
7 suffice in addressing this issue. Verizon VA's response would be that audit rights  
8 while arguably helpful, are not sufficient. This is because audits may only be  
9 conducted a limited number of times and, in addition, they are generally  
10 expensive and time consuming. As such, it is Verizon VA's intent to conduct  
11 such audits focused on a carrier's access to CPNI generally only when there is  
12 some indication of suspicious conduct.

13  
14 **XI. BINDING ARBITRATION (Issue IV-101)**

15 **Q. BRIEFLY DESCRIBE THE STATUS OF THIS ISSUE.**

16 A. This issue, which is unique to WorldCom, has not yet been resolved by the  
17 Parties, although it is the understanding of this Panel that the Parties are very close  
18 to resolution. Specifically, Verizon VA has proposed that parties resolve this  
19 issue by agreeing to incorporate the same language to which Verizon VA and  
20 AT&T have agreed with respect to arbitration.

21  
22 **Q. WHAT IS VERIZON VA'S POSITION ON THIS ISSUE?**

1     A.     Verizon VA is not required to agree to an ADR provision at all, and cannot be  
2           forced to forego its right to resolve disputes through the Commission’s regulatory  
3           processes. Arbitration of disputes under the interconnection agreement is a  
4           matter of contract and no party can be required to submit to third party binding  
5           arbitration any dispute that it has not agreed to submit in clear language.  
6           *WORLDCOM Technologies, Inc. v. Communications Workers of Am.*, 475 U.S.  
7           643, 648 (1986); *see also Marrowbone Development Company v. District 17,*  
8           *United Mine Workers of Am.*, 147 F.3d 296, 300 (4<sup>th</sup> Cir. 1998) (“the obligation to  
9           arbitrate is a creature of contract and . . . a party cannot be required to submit to  
10          arbitration unless he has agreed to do so in a contract”); *Hendrick v. Brown &*  
11          *Root, Inc.*, 50 F. Supp. 2d 527, 532 (E.D. Va. 1999) (“the legal predicate of  
12          compulsory arbitration is contractual consent”); *Waterfront Marine Construction,*  
13          *Inc. v. North End 49ers Sandbridge Bulkhead Groups A, B and C*, 251 Va. 417,  
14          427, 46 S.E.2d 894, 899 (1996) (“in the absence of a clear agreement, parties  
15          should not be forced to submit matters to arbitration which they may have  
16          contemplated would be decided by a court”) (citing *First Options of Chicago, Inc.*  
17          *v. Kaplan*, 514 U.S. 938 (1995)).

18  
19          Thus, to the extent that WorldCom has proposed ADR provisions to which  
20          Verizon VA has not agreed, this Commission cannot require inclusion of such  
21          provisions in the parties’ proposed agreement. As mentioned, Verizon VA will,  
22          as a compromise, agree to adopt the alternative dispute resolution procedures

1           agreed to by Verizon VA and AT&T. *See* § 28.11 of the AT&T-proposed  
2           interconnection agreement.

3  
4                           **XII. INDEMNIFICATION (Issue IV-106)**

5   **Q.    BRIEFLY DESCRIBE THE STATUS OF THIS ISSUE.**

6   A.    Issue IV-106 deals with indemnification. WorldCom proposed language that  
7           included part of what the parties agreed to in their 1997 interconnection  
8           agreement, as well as some additional language. WorldCom and Verizon VA  
9           discussed this issue in the August 2 mediation session, but were unable to reach a  
10          resolution.

11  
12   **Q.    WHAT IS VERIZON VA'S POSITION ON ISSUE IV-106?**

13   A.    Verizon VA cannot agree to include WorldCom's proposed Part A, § 19.1, unless  
14           subsection 19.1(b) is reinstated. That clause was in the parties' 1997  
15           interconnection agreement, but has been deleted by WorldCom. Subsection (b)  
16           provides an important incentive for each party to place in its tariffs and customer  
17           contracts limitations on the liability of its suppliers (*e.g.*, Verizon VA as a supplier  
18           to WorldCom) on account of the supplier's provision of services. This is a  
19           standard clause, which is widely used among utilities.

20  
21           The newly-proposed § 19.2 was not a part of the parties' 1997 interconnection  
22           agreement. It too is wholly unacceptable to Verizon VA. It provides, in essence,

1 the opposite of what subsection 19.1(b) provides. Section 19.2 would effectively  
2 make Verizon VA a guarantor, by requiring Verizon VA to indemnify WorldCom  
3 for any claim that WorldCom's customers make against WorldCom on account of  
4 Verizon VA's provision of services to WorldCom. Each party's liability under  
5 the interconnection agreement should generally be limited to the value of the  
6 services provided to the other party that are the subject of the claim.

7  
8 **Q. HAS VERIZON VA OFFERED AN ALTERNATIVE INDEMNIFICATION**  
9 **PROPOSAL?**

10 A. Yes. As an alternative, Verizon VA has proposed that it and WorldCom adopt the  
11 indemnification provisions agreed to by Verizon VA and AT&T. *See* § 24 of the  
12 AT&T-proposed interconnection agreement.

13  
14 **XIII. INTELLECTUAL PROPERTY RIGHTS (Issue IV-107)**

15 **Q. BRIEFLY DESCRIBE THIS ISSUE.**

16 A. Issue IV-107 involves the right of one party to use the intellectual property ("IP")  
17 of another. WorldCom wants to have the right to use whatever IP may be  
18 embedded in the Verizon VA UNEs it leases. Verizon VA, on the other hand,  
19 wants protection against the unrestricted and/or unauthorized use of any such IP.

20  
21 **Q. WHAT IS ITS CURRENT STATUS?**

1 A. The parties discussed this issue in the August 2 mediation session. After initially  
2 considering the language offered by WorldCom in Part A, § 20.1, the parties  
3 agreed to work from the language agreed to between Verizon VA and AT&T  
4 (§ 28.16.1). As of the filing of this testimony, WorldCom has not advised  
5 Verizon VA of any proposed changes to that language.

6

7 **Q. WHY DOES VERIZON VA OPPOSE WORLDCOM'S PROPOSED**  
8 **LANGUAGE?**

9 A. This issue is related to Issue III-15. Although Verizon will comply with  
10 applicable law, it cannot be forced to obligate itself through the interconnection  
11 agreement beyond the requirements of applicable law. Contrary to WorldCom's  
12 proposed language, except to the extent that Verizon may be required to use best  
13 efforts to negotiate or renegotiate licenses to procure relevant rights and licenses  
14 for CLECs to use the intellectual property of third-party vendors embedded in  
15 Verizon VA's network in order to use Verizon's UNEs (which Verizon has  
16 addressed in connection with Issue III-15), applicable law does not generally  
17 require Verizon to attempt to negotiate to acquire intellectual property rights for  
18 the benefit of a CLEC, and then indemnify that CLEC if it fails to acquire such  
19 rights.

20

21 **XIV. MIGRATION OF SERVICE (Issue IV-110)**

22 **Q. BRIEFLY DESCRIBE THIS ISSUE.**